

**DRAFT**  
**Frequently Asked Questions on**  
**the Securities and Futures (OTC Derivative Transactions –**  
**Reporting and Record Keeping Obligations) Rules**

**(15 May 2015)**

*These FAQs elaborate on how the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules (**Reporting Rules**) will operate and are intended to help market participants better understand their obligations and responsibilities under the Reporting Rules so that they are better able to prepare for implementation of the new regime and ensure compliance going forward.*

**These FAQs remain in draft form pending enactment of the Reporting Rules by LegCo after completing its negative vetting process. They may therefore be further revised to take into account any changes proposed during the negative vetting process.**

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## **Definitions and Interpretation**

*Unless the context otherwise requires, terms defined in Schedule 1 to the SFO or in the Reporting Rules bear the same meaning when used in the questions and answers below, and the following terms bear the following meanings:*

- *“**AIDG**” refers to the Administration and Interface Development Guide issued by the HKMA through the operator of HKTR;*
- *“**historical transaction**” in relation to a particular product type, means a transaction in that product type that was: (i) entered into before the product type specification day for that product type; and (ii) still outstanding on that day;*
- *“**HKMA**” refers to the Hong Kong Monetary Authority;*
- *“**HKTR**” refers to the electronic reporting system operated by or on behalf of the HKMA for submitting and receiving reports on specified OTC derivative transactions for the purposes of the Reporting Rules and section 101B of the SFO;*
- *“**HKTR Reporting Manuals**” refers to the reporting manuals and related documents issued by the HKMA (i.e. the AIDG, OTC Derivatives Trade Repository Reporting Service Reference Manual, Operating Procedure for Hong Kong Trade Repository Reporting Service – User Manual for Participants) and which, together, constitute the “directions and instructions for the use of electronic reporting system” required to be published by the HKMA under Rule 21(2) of the Reporting Rules;*
- *“**interim reporting requirement**” refers to the requirement to report certain OTC derivative transactions to the HKMA, which the HKMA imposed on licensed banks prior to the commencement of the Reporting Rules;*
- *“**Product class**” means a class of OTC derivative transactions;*
- *“**Product type**” means a type of OTC derivative transactions;*
- *“**prohibitive legal or regulatory limitation**” means a person cannot submit counterparty identifying particulars for a specified OTC derivative transaction because the disclosure of the particulars is prohibited under the laws of, or by an authority or a regulatory organisation in, a jurisdiction designated by the SFC in accordance with Rule 26(3) of the Reporting Rules;*
- *“**Reporting Rules**” means the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules;*
- *“**SFC**” refers to the Securities and Futures Commission;*
- *“**SFO**” refers to the Securities and Futures Ordinance (Chapter 571, Laws of Hong Kong);*

*These FAQs remain in draft form pending enactment of the Reporting Rules.*

- *“specified product class” means a class of OTC derivative transactions specified in column 2 of Part 2 of Schedule 1 to the Reporting Rules, and reference to a product class as being “specified” will be construed accordingly;*
- *“specified product type” means a type of OTC derivative transaction specified in column 3 of Part 3 of Schedule 1 to the Reporting Rules, and reference to a product type as being “specified” will be construed accordingly; and*
- *“TR” means trade repository.*

### **Legislation and technical guidance**

#### **Q1. Where are the reporting and related record keeping requirements set out?**

The broad framework for mandatory reporting and related record keeping is contained in Part IIIA of the SFO, and the detailed requirements for reporting and related record keeping are set out in the Reporting Rules. These documents are accessible at the Department of Justice’s website: [www.legislation.gov.hk](http://www.legislation.gov.hk).

Technical guidance for reporting is set out in the HKTR Reporting Manuals which are accessible at <https://hktr.hkma.gov.hk/>.

The Supplementary Reporting Instructions, annexed to the AIDG, provide an overview of the technical reporting requirements and would be a good start to understanding the more technical aspects of reporting.

### **Commencement Date**

#### **Q2. When will the reporting and related record keeping requirements start to operate?**

The reporting and related record keeping requirements will come into effect from the commencement of the Reporting Rules, scheduled for 10 July, 2015. Transactions will have to be reported on a T+2 basis, but this is subject to certain transitional arrangements (see Q3).

### **Transitional Arrangements**

#### **Q3. Is there any transitional arrangement for complying with the reporting requirements?**

Yes.

When the Reporting Rules come into effect, certain product types will be specified for reporting (see Q10). In general, when a product type is specified for reporting

for the first time, a concession period of 6 months will be allowed for a person to set up, or upgrade, internal systems and system linkage with the HKTR, as necessary, to comply with the reporting requirement in respect of that product type. The effect of the concession period is to allow a longer period for reporting transactions in a specified product type if: (i) the transactions are entered into during the concession period, or (ii) the transactions are historical transactions. Essentially, such transactions may be reported any time within 9 months from the product type specification day (i.e. within the grace period for that product type). So, for example, if product type A is specified on 1 January 201X, then transactions in product type A that were entered into before 1 January 201X (and are still outstanding on 1 January 201X) must be reported by 30 September 201X. Likewise, any transactions in product type A that are entered into between 1 January 201X and 30 June 201X must also be reported by 30 September 201X. It should be kept in mind however that the 9-month grace period, as well as the 6-month concession period, may be shorter in certain circumstances (see Q7 and Q8).

Any new transactions (in the specified product type) entered into after the concession period (i.e. after 30 June 201X in the above example) must be reported on a T+2 basis.

Points to note:

- (a) Although transactions which are “conducted in Hong Kong” (see Q18) during the concession period do not have to be reported until the end of the grace period, institutions that “conduct transactions in Hong Kong” during the concession period may still need to ensure that certain systems set-up or upgrade are in place to capture such transactions at the time the transactions are entered into.
- (b) Due to the requirement to report subsequent events (both in respect of historical transactions and transactions entered into during the concession period), institutions may find that reporting transactions before the end of the concession period will be easier than leaving the reporting to the last minute of the grace period (see Q41).
- (c) The concession period and grace period are intended to apply in respect of every product type when it is specified for reporting, including a newly specified product type that belongs to a product class which has already been specified for reporting before. For example, in the first phase of implementation, only certain product types within the IRS product class are specified for reporting. In a subsequent phase of implementation when other product types under IRS are specified for reporting, notwithstanding that IRS as a product class is already specified for reporting, a concession period and grace period will still apply to the newly specified product types, and such periods will run from the day these other product types are specified.

- (d) Historical transactions and transactions entered into during the concession period are not required to be reported if they mature or are terminated before the end of the grace period. However, if such a transaction has already been reported to the HKMA via the HKTR before it matures or is terminated, then any subsequent events in respect of that transaction (that occur up till the time the transaction matures or is terminated) should also be reported.

**Entities subject to reporting and related record keeping obligations**

**Q4. Who would be subject to the mandatory reporting and related record keeping obligations?**

In the initial phase, the mandatory reporting and the related record-keeping obligations will apply to an entity that is:

- (a) an authorized institution (“AI”);
- (b) an approved money broker (“AMB”);
- (c) a licensed corporation (“LC”); or
- (d) a recognized clearing house (“RCH”) – i.e. a central counterparty (“CCP”) that is recognized as a clearing house under section 37 of the Securities and Futures Ordinance.

The reporting and related record keeping obligations will be extended to ATS-CCPs on a later date when there are CCPs that have been authorized under section 95 of the SFO to provide central clearing services. Other types of entities will be covered in later phases of implementation.

**Q5. Are there any exemptions or reliefs from the reporting obligation?**

Yes, an exempt person relief is extended to AIs, AMBs and LCs that have maintained only small positions in OTC derivative transactions. The criteria for this relief, which apply on a per product class basis, are listed below. So long as an AI, AMB or LC meets these criteria, it will be exempted from reporting OTC derivative transactions in *any* specified product type falling within that product class. The criteria are:

- (a) the sum of the notional amounts of all of the AI/AMB/LC’s outstanding OTC derivative transactions in a specified product class (whether or not in a specified product type) must not at any time on or after the relevant product class specification day exceed US\$30 million;

- (b) the AI, AMB or LC must not have transactions “conducted in Hong Kong” (see Q18) in any specified product types within that product class at any time on or after the relevant product type specification day; and
- (c) in the case of an AI that is a licensed bank, it must not have reported any transaction to the HKMA under the interim reporting requirement which is a transaction in a specified product type within that product class, and which remains outstanding on the relevant product class specification day.

Points to note:

- (i) In the case of an overseas incorporated AI, criteria (a) and (b) above only apply in respect of the Hong Kong branch, i.e. for the threshold in criterion (a) only the notional amount of transactions booked in the AI’s Hong Kong branch will be counted, and for criterion (b) only transactions “conducted in Hong Kong” by the Hong Kong branch will be counted.
- (ii) The exempt person relief cannot be revived once lost. This means that once an AI, AMB or LC fails to meet any of the above criteria in respect of a specified product class, it will permanently cease to be entitled to the relief in respect of that product class. However, the AI, AMB or LC may still be eligible for the exempt person relief in respect of other product classes.

**Q6. My institution is a licensed bank. We reported IRS and NDF transactions via the HKTR under the interim reporting requirement. On the commencement date of the reporting regime, only the transactions in IRS but not NDF remain outstanding. Are we eligible for the exempt person relief with respect to IRS, NDF and other product classes to be specified for reporting in the future?**

Pursuant to criterion (c) stated in Q5, your institution is not eligible for the exempt person relief with respect to IRS. However your institution may still be eligible for the relief with respect to NDF and other product classes to be specified for reporting in the future, subject to meeting criteria (a) and (b) stated in Q5.

**Q7. My institution plans to become an AI/AMB/LC after the commencement of the Reporting Rules. Does my institution need to comply with the mandatory reporting and related record keeping requirements immediately after it becomes an AI/AMB/LC?**

Please read Q3 first.

For a person that becomes an AI/AMB/LC after the product type specification day of any product type, its concession period and grace period for reporting that product type will be shorter than the 6-month and 9-month periods that apply to a person that was an AI/AMB/LC on the product type specification day. Basically, the end of the concession period will remain the same but the end of the grace

period may vary depending on when the person becomes an AI/AMB/LC. Please see below for further explanation.

If the person becomes an AI/AMB/LC within 6 months after the product type specification day, the concession period will begin on the day the person becomes an AI/AMB/LC and end on the day that is 6 months after the product type specification day. The grace period will begin at the same time (i.e. on the day the person becomes an AI/AMB/LC) and end on the day that is 9 months after the product type specification day. (In other words, assuming the product type specification day is 1 January 201X and the person becomes an AI/AMB/LC on 27 March 201X, the person's concession period will be from 27 March 201X to 30 June 201X and the grace period will be from 27 March 201X to 30 September 201X.)

If the person becomes an AI/AMB/LC more than 6 months after the product type specification day, the person will not be entitled to any concession period. This means that the person must report any new transactions in that product type on a T+2 basis without any transitional arrangement. As the person ought to know that the product type is subject to mandatory reporting, it will be expected to be able to comply with the reporting requirement before it becomes an AI/AMB/LC. Nonetheless, the person will still have a grace period of 3 months (beginning on the day the person becomes an AI/AMB/LC) for reporting historical transactions. (In other words, assuming the product type specification day is 1 January 201X and the person becomes an AI/AMB/LC on 27 August 201X, there will be no concession period and the grace period will be from 27 August 201X to 26 November 201X. Transactions entered into before 27 August 201X will have to be reported by 26 November 201X and transactions entered into on or after 27 August 201X will have to be reported on a T+2 basis.)

**Q8. I expect that although my institution is eligible for the exempt person relief (see Q5) with respect to a product class at the start of the Reporting Rules, it will likely lose this relief some time later due to planned changes in business strategies. Is there any transitional arrangement for my institution to report transactions in that product class after my institution loses the exempt person relief?**

Please read Q3 first.

The transitional arrangements for an AI/AMB/LC that loses its exempt person status in respect of a product class are similar to the transitional arrangements for a new AI/AMB/LC (see Q7). Each specified product type within a product class will have its own concession period and grace period based on its own product type specification day. Details are as follows:



With respect to a specified product type within that product class, if the person loses the exempt person status within 6 months after the product type specification day, the concession period will begin on the day the person loses the exempt person status and end on the day that is 6 months after the product type specification day. The grace period will begin at the same time (i.e. on the day the person loses the exempt person status) and end on the day that is 9 months after the product type specification day. (In other words, assuming the product type specification day is 1 January 201X and the person loses the exempt person status on 27 March 201X, the concession period will be from 27 March 201X to 30 June 201X and the grace period will be from 27 March 201X to 30 September 201X.)

If the person loses the exempt person status more than 6 months after the product type specification day, the person will not be entitled to any concession period. This means that the person must report any new OTC derivative transactions in that product type on a T+2 basis once it loses the exempt person relief, i.e. there will be no transitional arrangement. Moreover, the transaction that results in the person losing the exempt person relief must also be reported on a T+2 basis. As the person ought to know that the product type is subject to mandatory reporting, it will be expected to monitor its OTC derivatives activities carefully to ensure that it will be able to comply with the reporting requirement immediately upon losing the exempt person relief. Nonetheless, it will still have a grace period of 3 months (beginning on the day the person loses its exempt person status) for reporting transactions that were entered into before losing its exempt person status but were still outstanding on the day it lost such status.

For illustration, assuming your institution exceeds the exempt person threshold with respect to NDF on 1 April 2016, i.e. more than 6 months after the product type specification day for NDF:

- (a) Your institution will not be entitled to any concession period for reporting specified NDF transactions. Any new NDF transactions in specified product types entered into on or after 1 April 2016 will have to be reported on a T+2 basis. The transaction that resulted in your institution exceeding the exempt person threshold on 1 April 2016 will also have to be reported on a T+2 basis.
- (b) A 3-month grace period will be provided for your institution to backload NDF transactions in specified product types which were entered into prior to 1 April 2016 and that are still outstanding on 1 April 2016. In other words, such transactions outstanding on 1 April 2016 should be reported by 30 June 2016. Once the transactions are reported, all future subsequent events in respect of those transactions should be reported on a T+2 basis.

## **Circumstances when reporting is required**

### **Q9. Under what circumstances should an OTC derivative transaction be reported?**

Counterparty limb - An AI, AMB, LC, RCH or ATS-CCP is required to report an OTC derivative transaction in a specified product type (see Q10) if it is a counterparty to the transaction. Additionally:

- (a) for an overseas incorporated AI, the transaction must be booked in its Hong Kong branch; and
- (b) for an ATS-CCP (when applicable – see Q4), the counterparty to the transaction must be a Hong Kong incorporated entity.

“Conducted in Hong Kong” limb - For an AI, AMB and LC, it is also required to report a transaction in a specified product type that it has “conducted in Hong Kong” (see Q18):

- (a) on behalf of an affiliate (in the case of any AI, AMB or LC); or
- (b) on behalf of its head office or its branch/office outside Hong Kong (in the case of the Hong Kong branch of an overseas incorporated AI).

Additionally, in the case of an RCH or ATS-CCP (when applicable), the reporting obligation will only apply when the RCH or ATS-CCP is acting in its capacity as a CCP. Transactions entered into as part of its default management procedures are still transactions entered into in its capacity as a CCP. They will therefore be reportable under the reporting regime.

### **Q10. What types of transactions will be subject to the reporting obligation?**

Only OTC derivative transactions in specified product types are required to be reported. In the Reporting Rules, each specified product type falls under a specified product class.

By definition (as set out in Schedule 1 to the SFO), OTC derivative transactions do not include, among others:

- (a) transactions in securities or futures contracts that are traded on a recognized stock market or recognized futures market (i.e. a market operated by an entity that is a recognized exchange company under the SFO);
- (b) transactions in securities or futures contracts that are traded on a stock or futures market and cleared through an overseas CCP if those markets and CCPs are prescribed under the Securities and Futures (Stock Markets, Futures Markets and Clearing Houses) Notice – these are listed in [Annex 1](#) and [Annex 2](#) respectively for ready reference;

- (c) transactions in a spot contract;
- (d) transactions in a structured product which is offered to the multiple persons for a short period and on essentially identical terms; and
- (e) transactions in an embedded derivative.

In the initial phase of implementation, the only product classes specified for reporting are interest rate swaps (“**IRS**”) and non-deliverable forwards (“**NDF**”), under which the specified product types for reporting are:

IRS - single-currency IRS (floating vs. fixed) and single-currency basis swap (floating vs. floating), each in currencies and floating rate indices specified by the HKMA by notice in the Gazette. (The list of specified currencies and indices will be accessible at both the HKMA’s and SFC’s respective website once gazetted.)

The above specified product types cover overnight index swaps but not forward rate agreements.

NDF - non-deliverable forward transactions in currencies specified by the HKMA by notice in the Gazette. (The list of specified currencies will be accessible at both the HKMA’s and SFC’s respective website once gazetted.)

**Q11. Are inter-branch and intra-branch transactions reportable?**

Inter-branch transactions (i.e. transactions between branches of the same legal entity) and intra-branch transactions (e.g. transactions between desks within the same branch) are not reportable. Such transactions are not between two persons and hence we do not regard them as being transactions between counterparties.

**Q12. Are transactions reportable if they are: (i) entered into with retail customers; (ii) undertaken for hedging purposes; or (iii) intragroup transactions (i.e. transactions between the reporting institution and an institution that belongs to the same group of companies as the reporting institution)?**

The answer to each of the above questions is “yes”, subject to the transactions meeting the reporting criteria. There is no general exemption provided for the reporting of these transactions.

**Q13. My institution is an overseas incorporated bank. We have entered into an OTC derivative transaction with a client and then entered into another transaction with our New York branch to transfer the market risk of the transaction. How should we report these transactions?**

Assuming that the transaction with the client is in a specified product type and booked in the Hong Kong branch, the transaction should be reported pursuant to the

counterparty limb (see Q9). As for the hedging transaction with the New York branch, this is not required to be reported because it is an inter-branch transaction (see Q11).

Please note that this case is different from the Hong Kong branch entering into a transaction on behalf of the New York branch (i.e. when the transaction with the client is booked with the New York branch directly without any inter-branch transaction to transfer the risk), which will be reportable under the “conducted in Hong Kong” limb (see Q9 and Q18).

**Q14. Does the reporting obligation have to apply to both counterparties at the same time in order for the transaction to be reportable?**

No. An AI, AMB, LC or RCH should report a transaction to which it has an obligation to report. Whether or not its counterparty has an obligation to report the transaction does not matter.

**Q15. Are historical transactions reportable?**

Yes, a person is required to report a transaction in a specified product type if the transaction was entered into in the past but remains outstanding when the reporting obligation first applies to the person in respect of that product type. The reporting obligation may first apply to a person when: (i) the product type is specified for reporting; or (ii) when the person is first captured by the Reporting Rules in respect of that product type. A person may be first captured by the Reporting Rules: (a) on the relevant product type specification day; or (b) on the day it becomes an AI, AMB or LC (assuming this is later than the relevant product type specification day); or (c) on the day it loses its exempt person status in respect of the product class to which the product type belongs (assuming it enjoyed such status on the relevant product type specification day).

The requirement to report historical transactions only applies in respect of transactions to which the person is a counterparty. For an AI, AMB or LC, the historical transactions that it “conducted in Hong Kong” are not required to be reported.

**Q16. Are there any other reporting obligations after a transaction is first reported?**

Yes. After a transaction is reported to the HKMA via the HKTR, you also need to submit a report (again via the HKTR) when a subsequent event (see Q40) in respect of that transaction takes place or when you identify a reporting error. (See the Supplementary Reporting Instructions annexed to the AIDG for detailed guidance on correcting erroneous reports.)

**Q17. Clarification of certain transactions**

- (A) Are derivative contracts which have been traded “off market” before they are registered on a prescribed market (and cleared at a prescribed CCP) regarded as transactions in an OTC derivative product? Or are they excluded by virtue of paragraph (2)(c) of section 1B of Part 1 in Schedule 1 to SFO and hence not reportable?

As long as the transactions are subsequently registered on a prescribed market in accordance with the rules of the market, they will be regarded as transactions traded on the prescribed market. If the transactions are also cleared through a prescribed CCP, then they will not be regarded as OTC derivative transactions and therefore will not have to be reported.

- (B) Are “back-to-back” transactions entered into with clearing brokers for the purposes of clearing futures or options contracts required to be reported?

No. We consider that the “back-to-back” transaction for the purposes of clearing should be treated as part of the exchange-traded futures or options contract. Accordingly, as long as the futures or options contract is executed on a prescribed market and cleared through a prescribed clearing house, the back-to-back transaction should also fall outside the definition of “OTC derivative transaction” and hence not be subject to mandatory reporting.

**“Conducted in Hong Kong” (Please read Q9 to Q10 first)**

**Q18. What is a “conducted in Hong Kong” transaction?**

For an AI, AMB or LC, a transaction is regarded as “conducted in Hong Kong” if:

- (a) one of the individuals who made the decision to enter into the transaction was a trader who was employed or engaged by the AI, AMB or LC to perform his or her duties predominantly in Hong Kong (i.e. a Hong Kong trader); and
- (b) the transaction was:
  - (i) conducted on behalf of an affiliate of the AI, AMB or LC, and was booked in that affiliate; or
  - (ii) conducted by the Hong Kong branch of an overseas incorporated AI on behalf of its head office or on behalf of any of its overseas branches, and was booked in such head office or overseas branch.

Please note that the term “affiliate” refers to a corporation that is within the same group of companies as the AI, AMB or LC but does not include a corporation that is a collective investment scheme as defined in the SFO.

#### **Q19. Sales activities**

**We have OTC derivative transactions that originated in Hong Kong but were booked in an affiliate in London. It is the staff in Hong Kong that contacts the clients, giving them price quotations and accepting their orders. Are these “conducted in Hong Kong” transactions that are required to be reported?**

A key characteristic of a “conducted in Hong Kong” transaction is that a Hong Kong trader is involved in making the decision of entering into the transaction. A person who only undertakes pure sales activities (i.e. whose role is only that of a salesman negotiating between a client and a trader) will not be regarded as a trader, even if the person is able to adjust the price offered to the client to achieve a desired sales credit.

If the Hong Kong staff only negotiate the transactions between clients and traders, and the traders responsible for the decision to enter into the transactions are not Hong Kong traders, the transactions will not be regarded as “conducted in Hong Kong” transactions.

If the traders that the Hong Kong staff negotiate with are Hong Kong traders, or if the Hong Kong staff that are client facing are also the traders, or act or perform the functions of traders even though they are employed as sales persons, the transactions will be regarded as “conducted in Hong Kong” and will have to be reported.

#### **Q20. Regional trading office**

**My institution is an overseas incorporated bank. Our Hong Kong branch serves as the regional trading office for OTC derivative transactions in that the Hong Kong traders are responsible for deciding whether to enter into transactions originating from branches in the Asia Pacific region, but the transactions are still booked in the respective originating branches. Are these transactions required to be reported?**

These transactions fit the definition of “conducted in Hong Kong” and so should be reported.

Conversely, transactions originating from the Hong Kong branch but attributable to traders outside Hong Kong will not be regarded as “conducted in Hong Kong” transactions. Nonetheless, such transactions may still need to be reported if they are booked in the Hong Kong branch as they will fall under the counterparty limb (see Q9).

## **Q21. Secondment**

**My institution is an AI/LC. An affiliate of my institution in the US has seconded a trader to the Hong Kong branch/office of my institution for 3 months. Transactions entered into by this trader during this time will be booked in either the Hong Kong branch/office of my institution or the US affiliate of my institution. Should these transactions be reported?**

Transactions booked in the Hong Kong branch/office of your institution fits the counterparty limb (see Q9) and should therefore be reported.

Transactions booked in the US affiliate of your institution fits the “conducted in Hong Kong” limb and should therefore also be reported. The analysis is as follows. A “conducted in Hong Kong” transaction should involve a trader that is engaged by the AI, AMB or LC to perform his or her duties predominantly in Hong Kong. This would include a secondment arrangement to Hong Kong because under such an arrangement, the trader would be performing his duties predominantly in Hong Kong during the secondment period.

Conversely, for traders who are normally based in Hong Kong but who are temporarily seconded to work in an overseas branch or affiliate of an AI/AMB/LC, transactions that they have conducted during their overseas secondment will not be regarded as “conducted in Hong Kong” transactions.

When assessing whether a trader should be regarded as having been seconded to (or out of) Hong Kong, a reporting institution should act reasonably and sensibly, taking into account all relevant facts and circumstances (e.g. the specific secondment arrangements, the formal contractual agreement, the account assigned to the trader in the seconded site, etc). In case of doubt, reporting entities may consult either the HKMA or the SFC. Additionally, reporting entities are reminded to keep sufficient records so that, if necessary, they are able to clarify the basis for the particular approach they have taken.

## **Q22. Transactions entered into during business trips**

**(A) I am a Hong Kong trader. I may enter into OTC derivative transactions outside Hong Kong during business trips. Are these transactions required to be reported?**

Yes, they are. If your transactions are booked in your institution (or the Hong Kong branch of your institution if your institution is an overseas incorporated AI), they will be caught by the counterparty limb (see Q9). If your transactions are booked in an affiliate of your institution, or (if your institution is an overseas incorporated AI) if your transactions are booked in the head office or an overseas branch, they are caught by the “conducted in Hong Kong” limb as you are a Hong Kong trader who works predominantly in Hong Kong.

We expect reporting entities and traders to take a sensible and reasonable approach when assessing if an arrangement should be regarded as a business trip or as a secondment. (Generally, we expect business trips would be brief or temporary in nature so as to have no impact on where the trader predominantly works.) In case of doubt, reporting entities may consult either the HKMA or the SFC. Additionally, reporting entities are reminded to keep sufficient records so that, if necessary, they are able to clarify the basis for the particular approach they have taken.

**(B) I am a trader in the Singapore branch of an overseas incorporated bank. Sometimes I enter into OTC derivative transactions during business trips to Hong Kong. These transactions are booked in the Singapore branch. Are these transactions required to be reported?**

It is unlikely that such transactions will be reportable. Firstly these transactions are not booked in the Hong Kong branch so they are not caught by the counterparty limb (see Q9). Secondly, since you are not a trader predominantly performing your duties in Hong Kong, your transactions are therefore not caught by the “conducted in Hong Kong” limb. However, again, reporting entities and traders should adopt a reasonable and sensible approach when assessing if their visits to Hong Kong constitute business trips or a secondment, and in case of doubt, reporting entities should consult either the HKMA or the SFC.

**Q23. Transactions involving multiple traders**

**In my institution, the decision to enter into OTC derivative transactions involves 2 traders – a junior trader in Hong Kong and a senior trader outside Hong Kong. Are we correct in thinking that such transactions will not be regarded as transactions that are “conducted in Hong Kong” (i.e. because the senior trader is not a Hong Kong trader)?**

No, as long as one of the persons responsible for the decision to enter into the transaction is a Hong Kong trader, the transaction will still be regarded as a “conducted in Hong Kong” transaction.

**Q24. Transactions in global book**

**How will the “conducted in Hong Kong” concept apply to transactions that are entered in a global book of my institution?**

For transactions booked in a global book, if the trader identified as responsible for the decision to enter into the transaction is a Hong Kong trader, the transaction will be regarded as a “conducted in Hong Kong” transaction and hence have to be reported. Once a transaction is reported to the HKMA, any subsequent events relating to the transaction will have to be reported as well, even if these subsequent



events are handled by other traders outside Hong Kong. Conversely, if a Hong Kong trader is not responsible for the decision to enter into the transaction, even if he or she may be involved in handling subsequent events relating to the transaction, neither the transaction nor the subsequent event will be reportable.

For a reporting entity that is unable to identify which transactions in its global book were decided by which traders, the reporting entity is expected to report, at a minimum, all transactions entered into during the period when the global book was managed by a Hong Kong trader. All subsequent events relating to such transactions are also expected to be reported to the HKMA.

**Q25. Transactions executed on electronic trading platform**

**How will the “conducted in Hong Kong” concept apply to transactions executed on an electronic trading platform?**

Transactions executed on an electronic trading platform should be reported if the person who sets the parameters of the key economic terms (in particular, pricing parameters) that will apply to transactions that are executed on the platform is a Hong Kong trader. In such case, the Hong Kong trader will be regarded as being responsible for the decision to enter into these transactions. On the other hand, if the parameters of the key economic terms were previously set (or modified) by a trader outside Hong Kong, but the latest modification was by a Hong Kong trader and in a manner that altered the pricing parameters of a transaction before it was executed, then the Hong Kong trader will be regarded as responsible for the final decision to enter into the transaction, and the transaction will have to be reported to the HKMA via the HKTR. In fact, the Hong Kong trader will thereafter continue to be regarded as setting the parameters of the key economic terms for transactions executed on the platform, until the parameters are next modified by another trader.

**Q26. Transactions entered into for a third party other than an affiliate**

**Should I report a transaction (in a specified product type) that I have entered into on behalf of a client which is not an affiliate of my institution?**

We assume that the counterparties to the transaction are the client and a third party institution. (In other words, we assume this is not a case where the counterparties are your institution and a third party institution with a back-to-back transaction between your institution and the client.) We assume also that neither the client nor the third party institution are affiliates of your institution.

Subject to the above assumptions, this transaction will not be reportable as it will not fall within either of the reporting limbs described in Q9.

## **How to report**

### **Q27. How should my institution prepare for reporting via the HKTR?**

An entity that has a reporting obligation must become a HKTR member, even if it plans to report through an agent (see Q29). Information on application for HKTR membership is available on the HKTR website: <https://hktr.hkma.gov.hk/>. Entities intending to report through an agent need to follow the agent nomination procedure set out in the HKTR Reporting Manuals. Completion of user tests to the satisfaction of the HKTR operator is a must before an entity will be accepted for reporting. This applies to both entities that wish to report directly and to those that wish to report through an agent. An entity must therefore reserve sufficient time for the HKTR operator to process its membership application and to complete the user tests in its planning for complying with the reporting obligation. The membership process usually takes about two weeks from the time all relevant documentation is received. User tests normally take about a week (depending on a prospective member's systems), and have to be pre-scheduled as per the timetable issued by the HKTR operator. Entities should therefore ensure they have allowed for sufficient lead time.

### **Q28. Is there any technical guidance on how to report a transaction?**

See Q1.

### **Q29. Can I appoint an agent to report to the HKMA?**

Yes. An entity can appoint an agent to report an OTC derivative transaction (and subsequent events relating to an OTC derivative transaction) to the HKMA to fulfil its reporting obligation. Despite any agency arrangement, the reporting obligation will still rest with the reporting entity itself. Therefore, the reporting entity must monitor the reporting by its reporting agent, e.g. through access to the HKTR, to ensure that its reporting obligation has been fulfilled. Any report submitted by a reporting agent must follow the HKTR requirements on agency reporting (e.g. it must indicate that the report is submitted for the reporting entity and identify who that reporting entity is).

### **Q30. If I have already reported a transaction to an overseas trade repository ("TR"), will I be considered to have fulfilled my reporting obligation in respect of that transaction?**

No. A reporting obligation is considered fulfilled only when the report reaches the HKMA via the HKTR (unless any exemption or relief applies). A reporting entity may appoint an agent, including an overseas TR, to submit reports via the HKTR on its behalf. The HKTR reporting templates have been designed to align as far as possible with those of global TRs as we anticipate some market participants may appoint global TRs as their reporting agent (see Q29).

**Q31. If my institution has “conducted in Hong Kong” a transaction on behalf of its affiliate and the affiliate has already reported the transaction to the HKMA via the HKTR, do I need to report the transaction again?**

If the affiliate of your institution has already reported this transaction to the HKMA via the HKTR, your obligation to report is taken to have been complied with if you have received in good faith a written confirmation from the affiliate that: (i) it has reported the transaction to the HKMA via the HKTR; and (ii) that the transaction has been reported in accordance with the requirements of the Reporting Rules. Therefore if you intend to rely on reporting by an affiliate to discharge your reporting obligation, it will be necessary to establish a mechanism to ensure that confirmations for all relevant transactions have been received from the affiliate and adequate records of such confirmations have been maintained. Reporting entities should also ensure that appropriate arrangements are made for the reporting of any subsequent events relating to transactions reported by an affiliate, i.e. if an entity intends to rely on the affiliate to report subsequent events as well, it should ensure that similar written confirmations are obtained from the affiliate in respect of the subsequent events; alternatively, it should ensure that subsequent events are reported by the reporting entity itself.

**Q32. Is over-reporting or voluntary reporting allowed?**

There is no prohibition on over-reporting, i.e. reporting transactions that are not required to be reported under the Reporting Rules. (For example, an entity may backload all outstanding transactions even if they are due to mature or be terminated before the expiry of the grace period and hence not subject to reporting – see Q3(d).) However, to maintain the integrity of data in the HKTR, once an AI, AMB, LC, RCH or (when applicable) ATS-CCP has reported a transaction voluntarily, any subsequent events relating to that transaction are required to be reported, and this must be done in the time and manner prescribed in the Reporting Rules (see Q35, Q36, Q37 and Q41).

**Q33. How should we report transactions that are within the reportable scope but cannot be reported in full because of limitations in the HKTR system?**

*Special product features:* If a transaction involves special product features that are not supported by the current reporting templates, it is acceptable to report information about the transaction only to the extent supported by the templates. For information, currently the TR templates can accommodate the following special features for interest rate swaps:

- (a) option to cancel transaction;
- (b) amortizing/accreting notional; and
- (c) early termination provision.

*Revised international standards:* Similarly, if a reporting entity cannot submit transaction information according to revised international standards (e.g. the currency code of a currency changes from XYD to XZD) because more time is needed to adjust the HKTR system to cater for the revised standards, the reporting entity should continue to report the transaction information using the original standards. The HKMA will announce special arrangements to deal with the reporting of affected transactions, including clarifying when the HKTR will start accepting transaction information using the revised international standards, and by when existing data in the HKTR has to be amended to conform to the revised standards. Sufficient lead time will be given in this regard so that institutions can have time to complete necessary systems enhancement to adapt to the revised standards.

*Other limitations:* The HKTR system limitations described above would still allow reports of the affected transactions to be submitted via the HKTR with all relevant data fields completed. However, there may be cases where an HKTR system limitation may prevent a reporting entity from reporting a transaction with all relevant fields completed (e.g. if the value of the transaction is so high that the existing data field in the HKTR's reporting template cannot accommodate it). In such cases, the reporting entity must contact the HKMA, which will then make special arrangements to receive the report of the transaction.

**Q34. What will be the reporting arrangement when an interest rate index or foreign currency becomes specified for the purposes of reporting (see Q10)?**

The HKMA will monitor the emergence of any new interest rate index or foreign currency and devise an appropriate plan to specify them for mandatory reporting locally where appropriate. In particular, the HKMA will announce the commencement day for each new interest rate index or foreign currency, on a case by case basis. Sufficient lead time will be given between the announcement and commencement day so that institutions have time to complete necessary systems enhancement to comply with the new reporting requirement.

**Time allowed to report**

**Q35. What is the time allowed to report a transaction or an event?**

In general, a transaction (or subsequent event) should be reported within two days of the trade execution (or occurrence of the subsequent event), i.e. on a T+2 basis, in order to fulfil the reporting obligation.

However, as a result of transitional arrangements which apply when an obligation to report a transaction in a specified product type applies to a person for the first time, the timeframe for reporting may be longer. (See Q3 for the transitional

arrangements and Q7 and Q8 for when the reporting obligation may apply to a person for the first time.)

## **What to report**

### **Q36. What transaction information should be reported?**

Please refer to the HKTR Reporting Manuals which are available at <https://hktr.hkma.gov.hk/>.

The key information required to be reported are as follows:

- (a) product class and product type to which the transaction belongs;
- (b) particulars of the counterparty (subject to any applicable masking relief, see Q42 and Q44);
- (c) the date the transaction was entered into, as well as its effective date and maturity date;
- (d) information relating to the platform (if any) on which the transaction was or will be confirmed or centrally cleared;
- (e) particulars of the transaction – e.g. notional amount, underlying currency or rate, etc.;
- (f) particulars of the subsequent event (if the reporting is in respect of a subsequent event); and
- (g) identifying references assigned to the transaction.

Moreover, reports submitted via the HKTR must be completed on the standard templates provided. The data fields on the templates fall under 3 categories: (i) mandatory; (ii) mandatory if applicable; and (iii) optional. The data fields designated as mandatory and mandatory if applicable must be completed as applicable, otherwise the report may be rejected and the reporting entity will have failed to fulfil the reporting obligation.

### **Q37. What are the requirements for reporting transaction identifying references, and where can we find more details about these requirements?**

A report of a transaction submitted pursuant to the Reporting Rules must contain certain transaction identifying references as such information will be critical to data analyses. Specifically, reporting entities are required to provide: (i) a transaction reference, which may be an internal reference; and (ii) a unique transaction identifier (UTI) which must be agreed between the counterparties and meet certain

standards and requirements. The key standards and requirements for UTIs are as follows:

- (a) The UTI must be agreed, and also shared and paired, between the two counterparties to the transaction so that if the reporting obligation applies to both of them, each will report the same UTI when reporting the transaction via the HKTR.
- (b) Where a Unique Swap Identifier (**USI**) reportable under the mandatory reporting requirements in the U.S. pursuant to the Dodd-Frank Act, or a Unique Trade ID (**TID**) reportable under the mandatory reporting requirements in the European Union, has been assigned in respect of the transaction, then the USI or TID (or both, if both have been assigned) must be adopted as the UTI when reporting the transaction to the HKMA.
- (c) Where neither a USI nor a TID has been assigned in respect of the transaction, the reporting of a UTI is optional, but only until the end of January 2016. On and after 1 February 2016, transactions that do not have a USI or TID must be assigned a bilaterally agreed UTI which is unique and shared and paired between the two counterparties. This bilaterally agreed UTI must then be included when reporting the transaction to the HKMA.
- (d) For transactions reported before 1 February 2016, and in respect of which no bilaterally shared and paired UTI was submitted at the time of reporting, a UTI may subsequently have to be supplemented, and in accordance with any international standards on UTIs that the HKMA may then require reporting entities to adopt.
- (e) The HKMA will provide guidance nearer the time if it intends to require reporting entities to adopt any particular format or practice in respect of UTIs. In that event, all previously submitted UTIs that follow a different format or practice may have to be re-submitted. Institutions are therefore encouraged to adopt methodologies and formulae that are in line with industry best practices for generating UTIs.
- (f) Although the reporting of UTIs is optional prior to 1 February 2016, institutions are nevertheless expected to exercise best endeavours in the meantime to: (i) use the time leading up to the commencement of the mandatory reporting regime and concession period to set up the necessary systems for generating and reporting UTIs; (ii) agree a UTI in respect of transactions that have to be reported, even if they are unable to report the bilateral UTI immediately; and (iii) when sharing and pairing a UTI, adopt a methodology which is in line with agreed industry best practices for generating, communicating and matching transaction identifiers. Reporting entities should also note that where a UTI has been agreed, and irrespective of

whether it has been reported, a record of it must be kept as per the record keeping obligation.

- (g) Please refer to the Supplementary Reporting Instructions annexed to the AIDG for more details on reporting transaction identifying references.

**Q38. My institution has a trade to report to the HKMA that has both a USI generated according to the US regulations and a TID generated according to the EU regulations, which one should I report?**

You should report both.

**Q39. How can I obtain a UTI if I do not have one?**

You may:

- (a) execute, match or clear your transactions on or through an electronic platform that is capable of generating a USI or TID;
- (b) rely on the counterparty to your transaction to generate a USI or TID for the transaction, assuming it has the capability to do so; or
- (c) agree on a UTI with the counterparty to your transaction, provided the UTI is unique and shared and paired between the two counterparties.

The Reporting Rules do not prescribe the mechanism for determining which of the two counterparties is to be responsible for generating the UTI. We also do not propose to mandate the use of any particular format or process for generating a bilaterally agreed UTI, although this is just an interim arrangement. When global UTI standards are developed in the future, the UTIs of existing transactions in the HKTR which do not accord with the emerging international standards may have to be amended. Reporting entities are therefore encouraged to adopt standard mechanisms/practices promoted by industry associations.

Reporting entities should ensure that matters relating to the reporting of UTIs are clarified with their counterparty at the time of entering into a transaction.

**Q40. What is a “subsequent event”?**

The term “subsequent event” is defined in the Reporting Rules to cover any event which occurs after the transaction was entered into, and which affects: (i) the terms and conditions on which the transaction was entered into; or (ii) the persons involved in entering into the transaction. In brief, it includes any event that affects key economic terms (e.g. any change in the notional amount, rate, counterparty etc.) of the transactions reported via the HKTR but does not include an event that occurs naturally and in accordance with the agreed terms and conditions (e.g. periodical fixings and natural maturity of the transaction). Further technical guidance on

“subsequent events”, and how they are to be reported, are given in the Supplementary Reporting Instructions annexed to the AIDG.

**Q41. Will the information to be reported in respect of a historical transaction, or a transaction entered into during the concession period, be any different if it is reported after the concession period?**

The information to be reported will be the same, but the way in which it is to be reported will differ as described below.

If a transaction is reported before the end of the concession period, the information reported should reflect the net effect of all subsequent events which have occurred since the transaction was entered into and up to a time no earlier than 2 business days before the day of reporting. For example, if the concession period ends on 30 June 201X and a transaction is reported on 15 January 201X, the data reported should reflect the position of the transaction as at a day (**position day**) which is more than 2 days earlier, i.e. as at 15, 14 or 13 January 201X but not as at any earlier day. Subsequent events occurring after the position day will have to be reported on a T+2 basis.

If the transaction is reported after the concession period, it should comprise: (i) transaction information as at the end of the concession period, and this should reflect the net effect of all subsequent events which have occurred since the transaction was entered into and up to the end of the concession period; and (ii) transaction information (in chronological order) in respect of each subsequent event which has occurred since the end of the concession period and up to a time no earlier than 2 business days before the day of reporting. Moreover, the transaction in question must be reported by the end of the grace period.

Example – A product type is specified for reporting on 1 January 201X. An institution has a transaction in that product type outstanding on this date. The notional amount of the transaction is increased on 1 February 201X, 1 July 201X and 1 August 201X. These are reportable subsequent events.

- (a) If the institution first reports the transaction via the HKTR on 1 May 201X (i.e. within the concession period), the report will have to reflect the status of the transaction as at 1 May 201X, 30 April 201X or 29 April 201X but not any earlier day. The first increase in notional amount (i.e. on 1 February 201X) will therefore have to be incorporated in this report, but the other two increases (i.e. on 1 July 201X and 1 August 201X) will have to be reported subsequently on a T+2 basis.
- (b) On the other hand, if the institution first reports the transaction via the HKTR on 30 September 201X (i.e. after the concession period but within the grace period), it will have to submit three separate reports on 30 September 201X.



The first report will have to show the position as at 30 June 201X (i.e. the end of the concession period); the second report will have to show the position as at 1 July 201X (i.e. the date of first subsequent event after the concession period); and the third report will have to show the position as at 1 August 201X (i.e. the date of second subsequent event after the concession period).

Although the information to be reported is similar, it may be easier for an institution to report such transactions within the concession period and deal with the reporting of their subsequent events as and when they occur, i.e. on a T+2 basis. If the institution opts to report these transactions until well after the end of the concession period, it will have to go back to its records, identify each subsequent event which needs to be reported, and then report these separately via the HKTR. This may be more time consuming. We therefore encourage institutions to report historical transactions and transactions entered into during the concession period as soon as they have set up their reporting system instead of waiting until the end of the grace period.

#### **Masking of counterparty identity**

**Q42. How can my institution report transactions that are subject to a prohibitive legal or regulatory limitation? (See also Q45.)**

If the submission of counterparty identifying particulars is prohibited in a jurisdiction that has been designated by the SFC, your institution may report the transactions via the HKTR with the counterparty identifying particulars masked. The list of designated jurisdictions for this purpose is as at [Annex 3](#).

**Q43. Is there any specific action that an institution is required to take in order to verify that Rule 26(1)(a)(i) is satisfied (i.e. to verify the existence of a prohibitive legal or regulatory limitation)?**

The list of jurisdictions is not intended to enable institutions to automatically mask particulars when transacting with counterparties from any of those jurisdictions. Rather, institutions should carry out some reasonable due diligence to ensure that barriers to disclosure still exist in the relevant jurisdiction, and that those barriers still prevent disclosure of counterparty particulars in respect of the particular transaction in question. This does not entail obtaining a formal legal opinion to support masking in a particular case, but would, at a minimum, require them to keep abreast of developments that might trigger changes which effectively allow the reporting of counterparty identifying particulars in a particular case. (So, for example, if barriers in jurisdiction X cease to apply in respect of certain types of transactions, or transactions entered into after a particular date, then institutions that enter into such types of transactions, or transactions after such date, should no longer be submitting masked particulars.)

**Q44. Can you give an example to illustrate the application of the masking provision with respect to the counterparty consent limitation (i.e. the limitation that prevents a person from submitting counterparty identifying particulars because the counterparty's consent is required and, despite reasonable efforts, the person cannot get such consent)?**

Reporting entities have 6 months from the commencement of the Reporting Rules to obtain the necessary counterparty consent to discharge their reporting obligation. Transactions entered into either before or during this 6-month period, and in respect of which the counterparty consent limitation applies, may be reported to the HKMA with the counterparty identifying particulars masked. Transactions entered into after this 6-month period however will not be entitled to such masking relief.

Additionally, where a reporting entity has relied on the masking relief, it is still expected to continue making reasonable efforts to obtain the counterparty's consent. Moreover, once the necessary consent is obtained, the relevant counterparty identifying particulars (which were previously masked) must be submitted to the HKMA via the HKTR within 1 month.

The application of this masking relief must also be considered together with the 9-month grace period allowed for reporting historical transactions and transactions entered into during the 6-month concession period (see Q3).

Example – Assume a reporting entity has 50 reportable transactions with a customer which were outstanding on the commencement day of the Reporting Rules (1 January 201X) and that it enters into a further 30 reportable transactions with the same customer in the following 6 months (i.e. from 1 January 201X to 30 June 201X). Assume also that despite reasonable efforts, the reporting entity is unable to obtain the necessary consent from the customer by the end of the 6-month period, but is able to obtain it a month later on 31 July 201X, i.e. 7 months after commencement of the Reporting Rules. In this case:

- (a) All 80 transactions must be reported by the end of the grace period (i.e. by 30 September 201X). If they are reported before 31 July 201X, they may be reported on a masked basis. However, the masked particulars will nevertheless have to be disclosed subsequently and within 1 month after the consent is obtained, i.e. by 31 August 201X.
- (b) Assume further that the reporting entity enters into another reportable transaction with the same customer on 2 August 201X (i.e. after obtaining the necessary consent but before the end of the grace period). Since this new transaction is entered into after the concession period, it must be reported on a T+2 basis. Also because this new transaction is entered into after the lapse of the period for the masking relief with respect to counterparty consent limitation, it must be reported with full counterparty identifying particulars.

- (c) The same applies even if the new transaction were entered into on 15 July 201X instead of 2 August 201X (i.e. before the consent was obtained but after the concession period). The reporting entity would still have to report full counterparty identifying particulars, i.e. the masking relief would not be available in respect of the new transaction. In such case, the entity would be in the difficult position of having to either breach its reporting obligation or breach its obligations to its customers and thus run the risk of legal action being taken against it by the customer. We therefore expect reporting entities to refrain from entering into new OTC derivatives transactions with customers who have not provided the necessary consent within 6 months from the day the Reporting Rules commence. Reporting entities are also strongly encouraged to start the process of obtaining client consent as early as possible.
- (d) The masking relief for counterparty consent limitation will not be available for transactions entered into more than 6 months after the commencement day of the Reporting Rules (i.e. after 30 June 201X in the above example). Transactions in product types that become subject to mandatory reporting after the 6-month period will therefore also be affected in so far as they are entered into more than 6 months after the commencement day, i.e. there will be no masking relief for any counterparty consent limitation. As the intention is to eventually cover product classes and all product types in due course, reporting entities should work towards obtaining the necessary consent from all counterparties, and not just those with whom they have IRS or NDF of the type described in Q10 above.

**Q45. The SFC has revoked the designation of a jurisdiction which was previously identified as having a prohibitive legal or regulatory limitation. What should we do if we have previously reported transactions on a masked basis in view of this designation?**

The revocation of a designation status will invariably be triggered by a change in the relevant prohibitive legal or regulatory limitation. The consequences of a revocation will therefore differ depending on the nature and impact of the particular change as summarised below:

- (a) If a change in the prohibitive legal or regulatory limitation does not apply to a transaction that was previously reported to the HKMA on a masked basis, then the transactions may remain masked. (For example, if the prohibitive legal or regulatory limitation is uplifted but only in respect of future transactions, and not in respect of existing transactions, then the change would not trigger further obligations under the Reporting Rules, and the counterparty particulars may remain masked.)
- (b) On the other hand, if a change in the prohibitive legal or regulatory limitation does apply to a transaction that was previously reported to the HKMA on a

masked basis, then, as the reporting entity, you must submit counterparty identifying particulars within 3 months after the day on which the SFC revokes the designation of the jurisdiction in question, unless the customer consent limitation (see Q44) applies and the customer consent cannot be obtained by the end of the 3-month period, despite reasonable efforts. In that case, the counterparty identifying particulars must be supplemented within 1 month after the day on which the counterparty consent limitation ceases to apply (i.e. within 1 month after the counterparty has provided the relevant consent).

**Q46. Is it necessary to supplement counterparty identifying particulars in respect of historical transactions that were previously reported on a masked basis but which will mature or be terminated before the deadline for supplementing the information?**

No, there is no need to supplement counterparty identifying particulars in such cases. (This is notwithstanding whether the masking relief previously relied on stemmed from a legal or regulatory limitation or from a counterparty consent limitation.) However, this does not preclude a reporting entity from doing so voluntarily.

**Q47. What is the procedure for proposing additional jurisdictions to the prescribed list of jurisdictions to which the masking relief applies?**

The masking relief is intended as a temporary/transitory measure only. The HKMA and SFC expect that the list to be shortened, not lengthened, over time as more jurisdictions resolve issues relating to barriers to trade reporting. We will also continue to monitor international development in this area when considering which designations should remain and which should be revoked.

Notwithstanding the above, if reporting entities consider that there are strong and exceptional circumstances which justify the addition of certain jurisdiction(s) to the list, they may write to either the HKMA or the SFC (at the addresses set out below) to voice their views and concerns. Reporting entities will be expected to explain and justify the exceptional circumstances that necessitate the proposed addition (including, if necessary, providing details of relevant transactions that are or may be affected). The submission must also be supported by a legal opinion citing the particular legal provision(s) that constitute(s) the prohibitive legal or regulatory limitation under the laws of that jurisdiction, and explain why such provision(s) did not previously pose a barrier or (if new) were added subsequently. Additionally, if the jurisdiction is not included in similar lists adopted by other major financial centres, the reporting entity will need to provide further justification as to why the addition is needed for the purposes of the reporting obligation in Hong Kong. Reporting entities should also note that requests to add jurisdictions to the prescribed list will be scrutinised closely, and will not be acceded to lightly. The HKMA and SFC will consider each proposal on a case by case basis, taking into

account international regulatory practices. The processing time for each proposal will depend on the merits of the case and the completeness of information provided to the regulators.

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Hong Kong Monetary Authority  
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8 Finance Street  
Central  
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**Supervision of Markets Division  
Securities and Futures Commission  
35/F Cheung Kong Centre  
2 Queen's Road Central  
Central  
Hong Kong**

### **Record keeping**

#### **Q48. What records do I need to keep in relation to the reporting obligation?**

The list of records to be kept is set out in Schedule 2 to the Reporting Rules.

#### **Q49. For how long the records should be kept?**

Records of a reportable transaction must be kept while the transaction is outstanding and for a further 5 years after the transaction matures or is terminated.

### **Specification of AI's subsidiaries**

#### **Q50. What criteria will the HKMA adopt when specifying subsidiaries of an AI whose OTC derivative transactions must be reported to the HKMA?**

Based on available information about the OTC derivatives activities of AIs' subsidiaries, the HKMA does not believe it is currently necessary to specify subsidiaries of any AIs for the purpose of the mandatory reporting obligation. However, the HKMA will continue to monitor AIs' activities, and may implement such requirement in the future, if necessary.

### **Interaction with interim reporting requirement – licensed banks**

#### **Q51. My institution is a licensed bank. We reported IRS and NDF transactions to the HKMA before the commencement of the Reporting Rules in accordance with the interim reporting requirement imposed by the HKMA. Do we need to report these transactions again upon the commencement of the Reporting Rules? Are we still entitled to the concession period and grace period provided in the Reporting Rules?**

On the need to report again: No, your IRS and NDF transactions that were reported under the interim reporting requirement and that remain outstanding on the commencement of the Reporting Rules are taken to have been reported under the Reporting Rules. It is not necessary to report these transactions again.

On the applicability of the concession period and grace period to licensed banks:  
The application of the concession period and grace period to licensed banks will be limited as follows:

- (a) The concession period and grace period will not apply in respect of transactions that were required to be reported under the interim reporting requirement are (i.e. transactions in IRS and NDF to which the reporting bank is a counterparty and the other counterparty is also a licensed bank).
- (b) Both periods will however apply in respect of transactions that were not reportable under the interim reporting requirement but become reportable under the Reporting Rules. This includes transactions in IRS and NDF where:
  - (i) the reporting bank's counterparty is not a licensed bank; or where
  - (ii) the transactions are "conducted in Hong Kong" by the reporting bank.

Example – Licensed bank A has reported transactions in IRS that remain outstanding on the commencement of the Reporting Rules. It starts entering into NDF transactions after the commencement of the Reporting Rules.

The outstanding IRS transactions are taken to have been reported on the commencement of the Reporting Rules so it is not necessary for bank A to report these transactions to the HKMA again. Moreover, bank A must report any subsequent events relating to these transactions on a T+2 basis. Additionally, after commencement of the Reporting Rules, bank A should also report any new transactions in IRS or NDF entered into with licensed bank counterparties on a T+2 basis. (This is because no concession period or grace period applies in respect of transactions that were subject to the interim reporting requirement). However, it is entitled to the concession period and grace period with respect to new IRS or NDF transactions that are entered into with non-licensed bank counterparties and that are "conducted in Hong Kong".

### **Consequences of breaches**

#### **Q52. What are the consequences if my institution breaches the reporting or related record keeping obligations?**

Compliance with the reporting and related record keeping obligations is a legal requirement. In the event of a breach, the HKMA (in the case of a breach by an AI or AMB) or the SFC (in the case of a breach by any other person) may apply to the Court of First Instance, which may then inquire into the case. If satisfied that there is no reasonable excuse for the breach, the Court may impose a financial penalty of up to HKD 5 million. Additionally, the HKMA (in the case of a breach by an AI or AMB) and the SFC (in the case of a breach by an LC) may take disciplinary action against the reporting entity in respect of the breach.

*These FAQs remain in draft form pending enactment of the Reporting Rules.*

Hong Kong Monetary Authority  
Securities and Futures Commission  
15 May 2015

**Annex 1 - List of prescribed stock markets and futures markets**

1. Athens Exchange Derivatives Market operated by Hellenic Exchanges – Athens Stock Exchange S.A.
2. Athens Exchange Securities Market operated by Hellenic Exchanges – Athens Stock Exchange S.A.
3. Baden-Wuerttembergische Wertpapierbörse (Regulierter Markt) operated by Börse Stuttgart AG
4. Bolsa de Madrid operated by Sociedad Rectora de la Bolsa de Valores de Madrid, S.A., Sociedad Unipersonal
5. Bourse de Luxembourg operated by Société de la Bourse de Luxembourg S.A.
6. Budapesti Értéktőzsde (Budapest Stock Exchange) operated by Budapesti Értéktőzsde Zártkörűen Működő Részvénytársaság
7. Electronic Bond Market operated by Borsa Italiana S.p.A.
8. Electronic Open-end Funds and ETC Market operated by Borsa Italiana S.p.A.
9. Electronic Share Market operated by Borsa Italiana S.p.A.
10. Eurex Deutschland operated by Eurex Frankfurt AG
11. Euronext Brussels Derivatives operated by Euronext Brussels N.V./S.A.
12. Euronext Brussels operated by Euronext Brussels N.V./S.A.
13. Euronext Lisbon operated by Euronext Lisbon – Sociedad Gestora de Mercados Regulamentados, S.A.
14. Euronext Paris operated by Euronext Paris S.A.
15. European Energy Exchange operated by European Energy Exchange AG
16. Frankfurter Wertpapierbörse (Regulierter Markt) operated by Deutsche Börse AG
17. Frankfurter Wertpapierbörse Xetra (Regulierter Markt) operated by Deutsche Börse AG
18. Italian Derivatives Market operated by Borsa Italiana S.p.A.



19. London Stock Exchange Derivatives Market operated by London Stock Exchange plc
20. London Stock Exchange – Regulated Market operated by London Stock Exchange plc
21. Market for Investment Vehicles (MIV) operated by Borsa Italiana S.p.A.
22. MEFF Exchange operated by MEFF Sociedad Rectora del Mercado de Productos Derivados, S.A., Sociedad Unipersonal
23. MEFF – Segmento Derivados Energía operated by MEFF Sociedad Rectora del Mercado de Productos Derivados, S.A., Sociedad Unipersonal
24. Mercado Continuo Español operated by Sociedad Rectora de la Bolsa de Valores de Madrid, S.A., Sociedad Unipersonal
25. NASDAQ OMX Copenhagen A/S operated by NASDAQ OMX Copenhagen A/S
26. NASDAQ OMX Helsinki (Arvopaperipörssi) operated by NASDAQ OMX Helsinki Ltd.
27. NASDAQ OMX Stockholm AB operated by NASDAQ OMX Stockholm AB
28. NYSE Euronext – Euronext Amsterdam operated by Euronext Amsterdam N.V.
29. Oslo Axess operated by Oslo Børs ASA
30. Oslo Børs ASA operated by Oslo Børs ASA
31. Securitised Derivatives Market operated by Borsa Italiana S.p.A.
32. The London International Financial Futures and Options Exchange (LIFFE) operated by LIFFE Administration and Management
33. Warsaw Stock Exchange/Bonds/Catalyst/Main Market operated by Warsaw Stock Exchange S.A.
34. Warsaw Stock Exchange/Commodity Derivatives operated by Warsaw Stock Exchange S.A.
35. Warsaw Stock Exchange/Equities/Main Market operated by

- Warsaw Stock Exchange S.A.
36. Warsaw Stock Exchange/ETPs operated by Warsaw Stock Exchange S.A.
  37. Warsaw Stock Exchange/Financial Derivatives operated by Warsaw Stock Exchange S.A.
  38. Wiener Börse AG Amtlicher Handel (Official Market) operated by Wiener Börse AG
  39. Wiener Börse AG Geregelter Freiverkehr (Second Regulated Market) operated by Wiener Börse AG
  40. Any stock markets or futures markets operated by the following market operators—
    - (a) Asia Pacific Exchange Limited;
    - (b) ASX Limited;
    - (c) Australian Securities Exchange Limited;
    - (d) BM&FBOVESPA S.A. – Bolsa de Valores, Mercadorias e Futuros;
    - (e) Board of Trade of the City of Chicago, Inc.;
    - (f) Borsa Istanbul Inc.;
    - (g) BOX Options Exchange LLC;
    - (h) BSE Ltd.;
    - (i) Bursa Malaysia Derivatives Berhad;
    - (j) Bursa Malaysia Securities Berhad;
    - (k) CBOE Futures Exchange, LLC;
    - (l) Chicago Board Options Exchange, Incorporated;
    - (m) Chicago Mercantile Exchange, Inc.;
    - (n) China Financial Futures Exchange;
    - (o) Commodity Exchange, Inc.;
    - (p) Dalian Commodity Exchange;
    - (q) Dubai Mercantile Exchange Limited;

- (r) Eurex Zürich AG;
- (s) Euronext UK Markets Limited;
- (t) FEX Global Pty Ltd.;
- (u) GreTai Securities Market;
- (v) ICE Futures Canada, Inc.;
- (w) ICE Futures Europe Limited;
- (x) ICE Futures U.S., Inc.;
- (y) Indonesian Stock Exchange;
- (z) International Securities Exchange, LLC;
- (za) JSE Limited;
- (zb) Korea Exchange, Inc.;
- (zc) Mercado Mexicano de Derivados, S.A. de C.V.;
- (zd) Minneapolis Grain Exchange, Inc.;
- (ze) Montréal Exchange Inc.;
- (zf) Multi Commodity Exchange of India Limited;
- (zg) Nagoya Stock Exchange, Inc.;
- (zh) NASDAQ OMX PHLX LLC;
- (zi) National Commodity & Derivatives Exchange Limited;
- (zj) National Stock Exchange of Australia Limited;
- (zk) National Stock Exchange of India Limited;
- (zl) New York Mercantile Exchange, Inc.;
- (zm) New York Stock Exchange LLC;
- (zn) New Zealand Exchange Limited;
- (zo) NYSE Arca, Inc.;
- (zp) NYSE MKT LLC;
- (zq) OJSC Moscow Exchange MICEX-RTS;

- (zr) OneChicago, LLC;
- (zs) Osaka Exchange, Inc.;
- (zt) Shanghai Futures Exchange;
- (zu) Shanghai Stock Exchange;
- (zv) Shenzhen Stock Exchange;
- (zw) SIM Venture Securities Exchange Ltd.;
- (zx) Singapore Exchange Derivatives Trading Limited;
- (zy) Singapore Exchange Securities Trading Limited;
- (zz) SIX Structured Products Exchange Ltd.;
- (zza) SIX Swiss Exchange Ltd.;
- (zzb) Tel Aviv Stock Exchange Ltd.;
- (zzc) Thailand Futures Exchange Public Company Limited;
- (zzd) The London Metal Exchange Limited;
- (zze) The NASDAQ Stock Market LLC;
- (zzf) The Philippine Stock Exchange, Inc.;
- (zzg) The Stock Exchange of Thailand;
- (zzh) The Taiwan Futures Exchange Corporation;
- (zzi) Tokyo Commodity Exchange, Inc.;
- (zzj) Tokyo Financial Exchange Inc.;
- (zzk) Tokyo Stock Exchange, Inc.;
- (zzl) TSX Inc.;
- (zzm) Turkish Derivatives Exchange;
- (zzn) Zhengzhou Commodity Exchange.

**Annex 2 – List of prescribed clearing houses**

1. Asigna, Compensación y Liquidación
2. ASX Clear (Futures) Pty Limited
3. ASX Clear Pty Limited
4. Athens Exchange Clearing House S.A.
5. BME Clearing S.A.
6. BM&FBOVESPA S.A. – Bolsa de Valores, Mercadorias e Futuros
7. Bursa Malaysia Derivatives Clearing Berhad
8. Bursa Malaysia Securities Clearing Sdn. Bhd.
9. Canadian Derivatives Clearing Corporation
10. Cassa di Compensazione e Garanzia S.p.A.
11. CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH (CCP.A)
12. CDS Clearing and Depository Services Inc.
13. Chicago Mercantile Exchange, Inc.
14. China Financial Futures Exchange
15. China Securities Depository and Clearing Corporation Limited
16. CJSC JSCB National Clearing Centre
17. Dalian Commodity Exchange
18. Eurex Clearing AG
19. European Central Counterparty N.V.
20. European Commodity Clearing AG
21. GreTai Securities Market
22. ICE Clear Canada, Inc.
23. ICE Clear Europe Limited

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24. ICE Clear U.S., Inc.
25. India Clearing Corporation Limited
26. Indonesian Clearing and Guarantee Corporation
27. Istanbul Clearing, Settlement and Custody Bank Inc. (Takasbank)
28. Japan Commodity Clearing House Co., Ltd.
29. Japan Securities Clearing Corporation
30. JSE Clear (Pty) Ltd.
31. KDPW\_CCP S.A.
32. KELER Central Counterparty Ltd.
33. Korea Exchange, Inc.
34. LCH.Clearnet Limited
35. LCH.Clearnet S.A.
36. LME Clear Ltd.
37. MAOF (Derivatives) Clearing House Ltd.
38. Minneapolis Grain Exchange, Inc.
39. Multi Commodity Exchange of India Limited
40. NASDAQ OMX Clearing AB
41. National Securities Clearing Corporation
42. National Securities Clearing Corporation Limited
43. New Zealand Clearing Limited
44. Oslo Clearing ASA
45. Securities Clearing Corporation of the Philippines
46. Shanghai Futures Exchange
47. Singapore Exchange Derivatives Clearing Limited
48. SIX SIS AG
49. SIX X-Clear Ltd.

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50. Sociedad de Gestión de los Sistemas de Registro,  
Compensación y Liquidación de Valores, S.A., Sociedad  
Unipersonal
51. TASE Clearing House Ltd.
52. Thailand Clearing House Co., Ltd.
53. The Central Depository (Pte) Limited
54. The Options Clearing Corporation
55. The Taiwan Depository & Clearing Corporation
56. The Taiwan Futures Exchange Corporation
57. Tokyo Financial Exchange Inc.
58. Zhengzhou Commodity Exchange

**Annex 3 – List of jurisdictions for the purposes of the masking relief**

1. Algeria
2. Argentina
3. Austria
4. Bahrain
5. Belgium
6. France
7. Hungary
8. India
9. Indonesia
10. Israel
11. Luxembourg
12. Pakistan
13. People's Republic of China
14. Samoa
15. Singapore
16. South Korea
17. Switzerland
18. Taiwan